

Message Text

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ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 DODE-00 EB-07 COME-00 SCSE-00

SCA-01 CIAE-00 INR-07 NSAE-00 H-02 TRSE-00 /031 R

DRAFTED BY L/NEA:JAROHWER:DSC
APPROVED BY L/NEA:JAROHWER
L:MBFELDMAN
NEA/IRN:RBEALES
DOD/GC:BFORMAN (DRAFT)

----- 028034

R 312232Z JUL 75
FM SECSTATE WASHDC
TO AMEMBASSY TEHRAN

UNCLAS STATE 181299

E.O. 11652: N/A
TAGS: BGEN, IR
SUBJECT: CONDUCT OF AMERICAN BUSINESS IN IRAN

REF: STATE 169972

1. PARA 2 CONTAINS TEXT OF AIDE-MEMOIRE ASKING FOR
CLARIFICATION OF CERTAIN POINTS REGARDING AFFIDAVITS
(PARA 2 REFTEL). PLEASE DELIVER TO APPROPRIATE PERSON IN
MFA.

2. QUOTE. THE GOVERNMENT OF THE UNITED STATES REFERS TO
THE REQUIREMENT OF THE GOVERNMENT OF IRAN THAT FOREIGNERS
WISHING TO ENGAGE IN BUSINESS ACTIVITIES INVOLVING THE
GOVERNMENT OF IRAN EXECUTE AND HAVE NOTARIZED AN AFFIDAVIT
CONCERNING THE AFFIANT'S PAYMENT OF FEES OR COMMISSIONS
TO AGENTS OR OTHER PERSONS IN CONNECTION WITH THOSE
BUSINESS ACTIVITIES. THE GOVERNMENT OF THE UNITED STATES
WELCOMES THE EFFORTS OF THE GOVERNMENT OF IRAN TO REGULATE
A PRACTICE WHICH HAS CAUSED BOTH GOVERNMENTS MUCH CONCERN.
THE GOVERNMENT OF THE UNITED STATES WILL BE HAPPY TO
COOPERATE IN THESE EFFORTS BY HAVING ITS CONSULAR OFFICERS
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NOTARIZE AFFIDAVITS EXECUTED BY AMERICAN BUSINESSES
OPERATING IN IRAN.

THE GOVERNMENT OF THE UNITED STATES WISHES TO NOTE THAT

CERTAIN OF ITS LAWS, PARTICULARLY THOSE RELATING TO

PERJURY, SUCH AS SECTION 1621 OF TITLE 18 OF THE UNITED STATES CODE, MAY PERTAIN TO STATEMENTS MADE IN AFFIDAVITS EXECUTED BY AMERICAN CITIZENS FOR NOTARIZATION BY CONSULAR OFFICERS OF THE UNITED STATES. WHILE THE GOVERNMENT OF THE UNITED STATES HAS NOT ENCOURAGED THE EXTRATERRITORIAL APPLICATION OF UNITED STATES LAW IN CONNECTION WITH FOREIGN PAYMENTS, AS PROPOSED IN CERTAIN MEASURES PENDING BEFORE THE UNITED STATES CONGRESS, THE ISSUE IS PRESENTED IN A DIFFERENT ASPECT WHEN A FOREIGN GOVERNMENT REQUESTS SUCH APPLICATION AS IN THIS CASE. SHOULD A QUESTION ARISE AS TO A FALSE STATEMENT IN AN AFFIDAVIT NOTARIZED BY A U.S. CONSULAR OFFICIAL CONCERNING A PAYMENT IN IRAN, UNITED STATES LAW ENFORCEMENT AUTHORITIES WOULD EXPECT THE COOPERATION OF THE GOVERNMENT OF IRAN IN ESTABLISHING THE RELEVANT FACTS AND CIRCUMSTANCES.

THE GOVERNMENT OF THE UNITED STATES NOTES, HOWEVER, THAT THE TEXTS OF THE AFFIDAVITS AND THEIR INTENDED EFFECTS ARE UNCLEAR IN CERTAIN IMPORTANT POINTS. THE EMBASSY OF THE UNITED STATES WILL ALREADY HAVE BROUGHT MANY OF THESE POINTS TO THE ATTENTION OF THE GOVERNMENT OF IRAN. THE GOVERNMENT OF THE UNITED STATES WISHES TO RECORD ITS UNDERSTANDING IN REGARD TO TWO ISSUES IN PARTICULAR, AND TO SEEK CLARIFICATION FROM THE GOVERNMENT OF IRAN OF ITS INTENT IN THESE TWO MATTERS.

FIRST, RESPECTING THE CIVIL PENALTIES FOR FALSE SWEARING SPECIFIED IN PARAGRAPH 5 OF THE LONG-FORM AFFIDAVIT, THE GOVERNMENT OF THE UNITED STATES NOTES ITS VIEW THAT EXPROPRIATION OF FOREIGN BUSINESS PROPERTY OR TERMINATION OF A FOREIGN CONCESSION ARE NOT APPROPRIATE REMEDIES FOR PERJURY; AND THE VALIDITY OF CONTRACTS SHOULD BE GOVERNED BY ESTABLISHED PRINCIPLES OF LAW. THE GOVERNMENT OF THE UNITED STATES BELIEVES THAT IRREGULARITIES IN THE EXECUTION OF AN AFFIDAVIT SHOULD BE DISCIPLINED BY MEANS UNCLASSIFIED

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OF CIVIL AND CRIMINAL PENALTIES SPECIFICALLY PRESCRIBED BY LAW FOR SUCH OFFENSES. THE GOVERNMENT OF THE UNITED STATES UNDERSTANDS THAT IT DOES NOT BY NOTARIZING SUCH AFFIDAVITS SURRENDER ANY OF THE RIGHTS OR RESPONSIBILITIES GIVEN IT BY INTERNATIONAL LAW FOR THE PROTECTION OF ITS CITIZENS' PROPERTY.

SECOND, THE RELATION BETWEEN THE LONG-FORM AFFIDAVIT, ISSUED IN THE NAME OF THE GOVERNMENT OF IRAN, AND THE SHORT-FORM AFFIDAVIT, ISSUED BY THE MINISTRY OF WAR, IS NOT CLEAR TO THE GOVERNMENT OF THE UNITED STATES. THE FOLLOWING POINTS ARE OF SPECIAL INTEREST:

(A) IT IS NOT APPARENT WHETHER BOTH FORMS ARE INTENDED TO BE USED IN TRANSACTIONS INVOLVING CONTRACTS FOR MILITARY MATERIAL AND SERVICES. IF BOTH FORMS ARE APPLICABLE TO THE SAME BUSINESS ACTIVITIES, THERE IS A SERIOUS CONFLICT BETWEEN THEM BECAUSE WHILE THE LONG-FORM AFFIDAVIT MERELY REQUIRES DISCLOSURE OF FEES AND COMMISSIONS, THUS IMPLYING THAT THE PAYMENT OF CERTAIN OF THESE IS ACCEPTABLE TO THE GOVERNMENT OF IRAN, THE SHORT-FORM AFFIDAVIT STRICTLY FORBIDS THEM. IF, BY CONTRAST, THE LONG-FORM AFFIDAVIT IS INTENDED BY THE GOVERNMENT OF IRAN TO BE APPLICABLE ONLY TO CONTRACTS FOR COMMERCIAL MATERIAL AND SERVICES, THE GOVERNMENT OF THE UNITED STATES FINDS IT DIFFICULT TO UNDERSTAND WHY A REASONABLE PAYMENT TO A BONA FIDE AGENT MIGHT BE REGARDED BY THE GOVERNMENT OF IRAN AS ACCEPTABLE WHEN THE ITEM OR SERVICE SOLD IS FOR COMMERCIAL USE BUT BE NOT ACCEPTABLE WHEN THE ITEM OR SERVICE SOLD IS INTENDED FOR MILITARY USE. IN THIS CONNECTION, THE ATTENTION OF THE GOVERNMENT OF IRAN IS INVITED TO THE CONFLICT BETWEEN A SHORT-FORM AFFIDAVIT WHICH FORBIDS AGENT'S FEES AND THE SPECIAL ITEM IN THE ARMED SERVICES PROCUREMENT REGULATION OF THE UNITED STATES DEPARTMENT OF DEFENSE PERTAINING TO FOREIGN MILITARY SALES (FMS) TO IRAN (PUBLISHED IN DEFENSE PROCUREMENT CIRCULAR 74-1, AUGUST 26, 1974, ITEM X) WHICH CONTEMPLATES THAT REASONABLE FEES FOR A BONA FIDE AGENT MAY BE IDENTIFIED AND PAYMENT THEREOF APPROVED, ON A CASE-BY-CASE BASIS, BY THE GOVERNMENT OF IRAN BEFORE CONTRACT AWARD. IT IS THE UNDERSTANDING OF THE GOVERNMENT OF THE UNITED UNCLASSIFIED

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STATES THAT DPC ITEM X CONTINUES TO BE ACCEPTABLE TO THE GOVERNMENT OF IRAN.

(B) BY ITS TERMS, THE SHORT-FORM AFFIDAVIT MIGHT ALSO BE READ TO PROHIBIT PAYMENT OF LEGITIMATE FEES AND COMMISSIONS TO THIRD PARTIES WHO ARE NOT SALES AGENTS, SUCH AS THOSE RENDERED TO ATTORNEYS, ACCOUNTANTS, ENGINEERING CONSULTANTS, AND FREIGHT FORWARDERS FOR THEIR SERVICES, WHETHER IN THE UNITED STATES OR IN IRAN, IN CONNECTION WITH THE PERFORMANCE OF A CONTRACT. THE GOVERNMENT OF THE UNITED STATES ASSUMES THAT THE PROHIBITIONS OF THIS AFFIDAVIT ARE NOT INTENDED TO EXTEND TO THE PAYMENT OF APPROPRIATE FEES AND COMMISSIONS TO PERSONS PERFORMING LEGITIMATE SERVICES FOR A CONTRACTOR, PROVIDED THAT SUCH SERVICES ARE NOT PURELY REPRESENTATIONAL ONES WITH THE GOVERNMENT OF IRAN OR WITH ANY OF ITS OFFICERS.

(C) THE GOVERNMENT OF THE UNITED STATES UNDERSTANDS THAT BOTH THE LONG-FORM AND SHORT-FORM AFFIDAVITS ARE INTENDED TO BE EXECUTED IN CONNECTION WITH DIRECT CONTRACTS BETWEEN

THE GOVERNMENT OF IRAN AND FOREIGN COMPANIES. HOWEVER,

THE SHORT-FORM AFFIDAVIT CAN APPARENTLY BE EXECUTED BEFORE
A NOTARY PUBLIC WITHIN THE NATIONAL TERRITORY OF THE
FOREIGN COMPANY AND IS SEEMINGLY REQUIRED OF ALL SUPPLIERS
EVEN THOUGH A PARTICULAR SUPPLIER IS NOT DOING BUSINESS
"IN" IRAN. THE LONG-FORM AFFIDAVIT IS APPARENTLY TO BE
EXECUTED ONLY IN IRAN, SINCE IT IS TO BE NOTARIZED BEFORE
CONSULAR OFFICIALS, AND IS SEEMINGLY APPLICABLE, THERE-
FORE. ONLY TO THOSE CONTRACTORS DOING BUSINESS "IN"--
AS DISTINGUISHED FROM "WITH"--IRAN. THE GOVERNMENT OF THE
UNITED STATES IS UNCERTAIN WHETHER THESE DIFFERENCES IN
THE TWO FORMS ARE INTENDED BY THE GOVERNMENT OF IRAN.

THE GOVERNMENT OF THE UNITED STATES WOULD APPRECIATE BEING
INFORMED OF THE VIEWS OF THE GOVERNMENT OF IRAN
ON THE MATTERS RAISED IN THIS AIDE-MEMOIRE, AND ON OTHER
QUESTIONS RELATED TO THE AFFIDAVITS. IF THE GOVERNMENT OF
IRAN SO DESIRES, THE GOVERNMENT OF THE UNITED STATES
WOULD BE PLEASED TO CONSULT WITH THE GOVERNMENT OF IRAN
ON THE APPLICATION OF THE AFFIDAVITS TO AMERICAN BUSINESS-
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ES IN IRAN.END QUOTE. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 31 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE181299
Document Source: ADS
Document Unique ID: 00
Drafter: L/NEA:JAROHWER:DSC
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750265-0835
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197507107/baaaaqvd.tel
Line Count: 189
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: hartledg
Review Comment: n/a
Review Content Flags:
Review Date: 16 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 Sep 2003 by MorefiRH>; APPROVED <15 JAN 2004 by hartledg>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: BGEN, IR
To: TEHRAN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006